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REVIEW OF THE STATUS OF THE FIVE INTERNATIONAL LEGAL INSTRUMENTS GOVERNING OUTER SPACE

Working paper submitted by Germany on behalf of Austria, Belgium, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland

INTRODUCTION

1. The States submitting the present working paper, i.e. the member States of the European Space Agency (ESA) and States having signed cooperation agreements with ESA, welcome the introduction of the agenda item entitled "Review of the status of the five international legal instruments governing outer space". In the first part of this working paper, the signatories inform the Legal Subcommittee of the status of their accession to those legal instruments, pursuant to a request by the Secretary-General in his note verbale dated 14 July 1997. In the second part of this working paper, a proposal for drawing up an inventory of relevant legal texts by the Secretariat is made. In the third part of this working paper, the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex, of 12 November 1974), which was opened for signature on 14 January 1975 and which entered into force on 15 September 1976, is identified as the legal instrument that could be improved further. To that end, a work plan on that subject is set out.

*A/AC.105/C.2/L.209 and Corr.1.

I. STATUS OF THE LEGAL INSTRUMENTS CONCERNING THE STATES SUBMITTING THE PRESENT WORKING PAPER

2. The table below outlines the status of the legal instruments concerning the States submitting this working paper:

Status of the legal instruments concerning the States submitting the working paper

Country	*Outer Space Treaty*[a] *(1967)*	*Rescue Agreement*[b] *(1968)*	*Liability Convention*[c] *(1972)*	*Registration Convention*[d] *(1975)*	*Moon Agreement*[e] *(1979)*
Austria	Ratified	Ratified	Ratified	Ratified	Ratified
Belgium	Ratified	Ratified	Ratified	Ratified	..
Czech Republic	Ratified	Ratified	Ratified	Ratified	..
Denmark	Ratified	Ratified	Ratified	Ratified	..
Finland	Ratified	Ratified	Ratified	..	..
France	Ratified	Ratified	Ratified	Ratified	Signed
Germany	Ratified	Ratified	Ratified	Ratified	..
Greece	Ratified	Ratified	Ratified	Signed	Ratified
Hungary	Ratified	Ratified	Ratified	Ratified	..
Ireland	Ratified	Ratified	Ratified	Ratified	..
Italy	Ratified	Ratified	Ratified	[f]	..
Netherlands	Ratified	Ratified	Ratified	Ratified	Ratified
Norway	Ratified	Ratified	Ratified	Ratified	..
Poland	Ratified	Ratified	Ratified	Ratified	..
Portugal	..	Ratified	..	..	..
Romania	Ratified	Ratified	Ratified	..	Signed
Spain	Ratified	..	Ratified	Ratified	..
Sweden	Ratified	Ratified	Ratified	Ratified	..
Switzerland	Ratified	Ratified	Ratified	Ratified	..
United Kingdom	Ratified	Ratified	Ratified	Ratified	..

[a]Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex, of 19 December 1966).

[b]Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (General Assembly resolution 2345 (XXII), annex, of 19 December 1967).

[c]Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex, of 29 November 1971).

[d]Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex, of 12 November 1974).

[e]Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (General Assembly resolution 34/68, annex, of 5 December 1979).

[f]Procedure in progress.

3. ESA has accepted the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (General Assembly resolution 2345 (XXII), annex, of 19 December 1967), the Convention on International Liability for Damage Caused by Space Objects (Assembly resolution 2777 (XXVI), annex, of 29 November 1971) and the Registration Convention.

II. INVENTORY OF RELEVANT LEGAL TEXTS

4. Since the entry into force of the Outer Space Treaty on 10 October 1967, the body of law governing space and space activities has considerably developed, to a great extent outside the Committee on the Peaceful Uses of Outer Space and without its Legal Subcommittee being involved. In consequence, space law as a whole has become fragmented, difficult to grasp and, in some areas, of doubtful coherence. Are the new developments consistent with the United Nations treaty law? Has the primary law been taken into account and, if so, how?

5. These new developments demonstrate the necessity and vitality of space law in general and the efforts it is making to produce imaginative practical solutions corresponding as closely as possible to evolving realities. The Committee, supported by its Legal Subcommittee in particular, is in a manner of speaking the custodian of this primary law, the roots of the tree, while remaining attentive to potential needs arising as space activities evolve.

6. The sources of space law have multiplied:

(a) Texts are adopted or considered under the auspices of other universal international organizations, such as the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the International Civil Aviation Organization, the International Telecommunication Union, the World Meteorological Organization and the World Intellectual Property Organization;

(b) In the context of the Conference on Disarmament;

(c) Specific international organizations that have been set up also draw up texts (the International Telecommunications Satellite Organization (INTELSAT), the International Mobile Satellite Organization (Inmarsat), ESA, the European Organisation for the Exploitation of Meteorological Satellites (EUMETSAT), the European Telecommunications Satellite (EUTELSAT), the Arab Satellite Communications Organization (ARABSAT), the International Organization of Space Communications (INTERSPUTNIK), etc.);

(d) Non-governmental organizations (the Committee on Space Research (COSPAR) etc.);

(e) International cooperation, a very significant factor, also generates bilateral or multilateral legal texts that are of interest (e.g. the intergovernmental agreement on the international space station and the memoranda of understanding for its implementation; the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques; access to and use of Earth observation satellites, scientific satellites etc.);

(f) The International Institute for the Unification of Private Law (Unidroit) conference and its draft for a future convention on international guarantees, with provisions relevant to satellites.

7. Also to be borne in mind are the legislation (directives and regulations) adopted by the European Union (on telecommunications, patents and copyright), national legislation, and contracts on various relevant subjects (launch services, insurance etc.).

8. An overview of the law in existence has become difficult, but is nevertheless essential. It is accordingly proposed that the Secretariat be instructed, at the thirty-seventh session of the Legal Subcommittee, in 1998, to draw up an inventory, a list of the texts in existence and where to find them, as a working document for the Member States. Such a document would be most useful to the Legal Subcommittee in its work.

9. In order to carry out this task, the Secretariat would need active assistance from delegations, also under consideration of already existing text collections.* The resulting inventory could be put on CD-ROM and incorporated into the existing databases on space law, so that it would also be useful for research. It would of course be updated regularly.

III. IMPROVING THE REGISTRATION CONVENTION

10. The States submitting the present working paper regard the Registration Convention as an important legal instrument and recognize its close relation with the Outer Space Treaty and the Liability Convention. They do not seek in any way to change the text of the Registration Convention itself but to clarify and possibly amend the legal instrument with texts reflecting experience with the Convention and new technological and legal developments.

11. Five topics should be discussed in the context of an improvement of the Registration Convention:

(a) Article IV, paragraph 1, of the Registration Convention requires States of registry to furnish information to the Secretary-General of the United Nations concerning each space object carried on its registry "as soon as practicable". The aim should be to introduce a time limit for furnishing the required information;

(b) Article IV, paragraph 1, of the Registration Convention sets out the single pieces of information concerning the space objects launched. This information should be extended, to include, for example, information on the mass of the space object;

(c) Article I of the Registration Convention defines the term "launching State" following article I of the Liability Convention. New developments in the field of launching technology and the privatization of this sector could lead to the conclusion that this definition is not sufficient. Therefore, on the basis of a technical review in the Scientific and Technical Subcommittee—which should also be conducted for the topic listed in subparagraph (b) above, before a discussion begins in the Legal Subcommittee—it should be investigated whether the definition of the term "launching State" still adequately covers all launching activities;

(d) In order to explore each entity linked with the launching activities, it is suggested that the Legal Subcommittee should proceed with an analysis of potential questions related to international organizations when implementing the Registration Convention;**

(e) In order to strengthen the status of certain parts of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, adopted by the General Assembly in its resolution 47/68 of 14 December 1992, which are related to the Registration Convention, principles 5 (Notification of re-entry), 6 (Consultations) and 7 (Assistance to States) should be included without change into the Registration Convention as article VI *bis*, *ter* and *quater*.

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*In particular, Stephen Gorove, ed., *United States Space Law: National and International Regulation* (New York: Oceana Publishers, 1982) and Karl-Heinz Böckstiegel and Marietta Benkö, eds., *Space Law: Basic Legal Documents* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1988).

**ESA will undertake, at the invitation of its member States and in liaison with other interested organizations, an analysis of the rights and obligations of international organizations conducting space activities with respect to the five international legal instruments governing outer space.

12. All amendments, which would be agreed upon in the Committee on the Peaceful Uses of Outer Space, should be adopted by the General Assembly in resolutions and eventually be transformed into international law as an additional protocol to the Registration Convention, ratified by all States.

13. As for a work plan on that subject, the following three-year plan is proposed:

First year:

Scientific and Technical Subcommittee

New technical parameters for notification
New technical concepts for launching (e.g. from platforms on the high sea)

Legal Subcommittee

Article IV, paragraph 1, time limit for "as soon as practicable"

Second year:

Scientific and Technical Subcommittee

Finalizing discussion on the two technical points

Legal Subcommittee

Incorporation of the relevant parts of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space
Status of international organizations

Third year:

Legal Subcommittee

New technical parameters for notification
New technical concepts for launching (clarification of "launching State")
Adoption of an additional protocol